**REMARKS**

By this amendment, claims 1-42 are pending, in which no claims are canceled, withdrawn from consideration, currently amended, or newly presented. No new matter is introduced.

The final Office Action mailed November 7, 2008 rejected claims 1-3, 5-10, 12-17, 19-24, 26-31, 33-38, and 40-42 as obvious under 35 U.S.C. § 103 based on *Kitchen et al.* (US 6,289,322) in view of *Smith et al.* (PC Computing article, 1992) and claims 4, 11, 18, 25, 32, and 39 as obvious under 35 U.S.C. § 103 based on *Kitchen et al.* (US 6,289,322) and *Smith et al.* (PC Computing article, 1992) in view of *Business Owner* (1995 article).

At the outset, Applicant gratefully acknowledges the withdrawal of the objection to claims 2, 9, 16, 23, 30, and 37, and the withdrawal of the rejections under 35 U.S.C. § 112.

Applicant respectfully traverses the rejections under 35 U.S.C. § 103 for the reasons set forth in the previous response of July 25, 2008, incorporated herein, and requests reconsideration for the following reasons.

The Final Office Action merely reiterates the previous rejection without further elaboration on Applicant's arguments (within the response of July 25, 2008). In fact, the only response offered in the Final Office Action appears at page 3 thereof, merely stating that Applicant's arguments are directed to the references individually, rather than to the combination, and also referring to *KSR v. Teleflex*, 550 US____, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007).

Applicant points out that the references are not argued individually. Rather, Applicant has pointed out the deficiencies of each of *Kitchen et al.* and *Smith et al.* and then, at page 15 of the response of July 25, 2008, specifically argues why the combination of these references fails to evidence obviousness of the instant claimed subject matter, indicating that not only is there inadequate motivation for making the combination but that even if the combination could be

made, the claimed feature of calculating a discount amount based on an invoice amount and an invoice date is still missing.

In particular, even assuming, *arguendo*, that *Kitchen et al.* disclosed an invoice having "an invoice due date," and that *Kitchen et al.* "inherently" disclosed an invoice having "an invoice due date," taking this in combination with the very general disclosure of *Smith et al.* of early payment discounts, the instant claimed subject matter would still not have been obvious, within the meaning of 35 U.S.C. § 103.

Claim 1, for example, recites, *inter alia*, "retrieving customer invoice information that includes **an invoice due date** and an invoice amount" and "selectively receiving a payment input that authorizes a payment **according to the calculated discount amount in advance of the invoice due date**. Claim 8, for example, recites, *inter alia*, "a communication interface configured to retrieve customer invoice information that includes **an invoice due date** and an invoice amount" and "a payment input that authorizes a payment **according to the calculated discount amount in advance of the invoice due date** is selectively received from the client." Claim 15, for example, recites, *inter alia*, "a database configured to store customer invoice information that includes **an invoice due date** and an invoice amount" and "a payment input that authorizes a payment **according to the calculated discount amount to the server in advance of the invoice due date.**" Claim 22, for example, recites, *inter alia*, "means for retrieving customer invoice information that includes **an invoice due date** and an invoice amount" and "means for selectively receiving a payment input that authorizes a payment **according to the calculated discount amount in advance of the invoice due date**. Claim 29, for example, recites, *inter alia*, "retrieving customer invoice information that includes **an invoice due date** and an invoice amount" and "selectively receiving a payment input that authorizes a payment **according to the calculated discount amount in advance of the invoice due date**." Claim 36,

for example, recites, *inter alia*, "a database for storing customer invoice information, said information including **an invoice due date** and an invoice amount" and "wherein said early payment discount is applied only upon payment **within a pre-defined time period of <u>said invoice due date</u>**."

Therefore, each and every claim not only recites an "invoice due date," but there is a specifically claimed relationship between the invoice due date and the discounted amount. This claimed relationship between invoice due date and a discounted amount is neither disclosed nor suggested by either one of *Kitchen et al.* or *Smith et al.* or the combination thereof.

The Final Office Action appears to rely on *KSR* for a finding of obviousness for subject matter that, in hindsight, seems simple, notwithstanding the lack of evidence to present a *prima facie* case of obviousness. While *KSR* may have limited a strict application of the teaching-suggestion-motivation (TSM) test for obviousness, the Supreme Court did not do away with the requirement of evidence to support a conclusion of obviousness. In fact, under the rationale of KSR, some "articulated reasoning with some rational underpinnings" is required for a conclusion of obviousness. Since the claimed relationship between an invoice due date and a discounted amount is neither disclosed nor suggested by either one of *Kitchen et al.* or *Smith et al.* or the combination thereof, and the Final Office Action has not articulated any reasoning, with some rational underpinning, for finding the claimed subject matter obviousness in spite of this deficiency by the applied references, no *prima facie* case of obviousness has been established.

The Final Office Action, on page 5, merely concludes that it "would have been motivated to improve cash flow and build good will among customers." The fact that all businesses would like to "increase cash flow and build good will among customers" does not explain, in any rationale manner, what would have led the skilled artisan to modify *Kitchen et al.* in the specific manner claimed to employ an invoice due date (which *Kitchen et al.* does not even teach or

suggest) to calculate an early discount amount. The general teaching by *Smith et al.* regarding "giving discounts for early payments" does not, *per se*, suggest to artisans any specific modification to the system of *Kitchen et al.* in order to provide such discounts by specifically calculating those discounts in accordance with an invoice due date.

While it may appear a simple matter, in hindsight, viewing Applicant's disclosure as a guide, to use an invoice due date to actually calculate a discounted amount and to selectively receive a payment input that authorizes a payment according to the calculated discount amount in advance of that invoice due date, is not the test for obviousness, within the meaning of 35 U.S.C. § 103.

Such reasoning applies *a fortiori* with regard to claims 2, 3, 9, 10, 16, 17, 24, 30, 31, 36, 37, and 40, for example, where a "pre-defined time period is used to determine the validity time of a discount amount, and to claims 4, 11, 18, 25, 32, and 38, for example, where the discount amount is based on a percentage of the invoice amount and additional discount amounts are calculated based upon another percentage of the invoice amount, with the automatic application of either of the discount amounts based upon time of receipt of the payment input (although *Business Owner* is applied for the features of claims 4, 11, 18, 25, and 32, the features are not suggested by the combination of references for the reasons set forth at page 16 of the response of July 25, 2008 and incorporated herein). None of these features is taught or suggested by the applied references, or by any combination thereof, and it is clearly impermissible hindsight for the Examiner to conclude that they are.

Applicant notes that on page 8 of the Final Office Action, it is stated, "the claimed subject matter **likely** would have been obvious under KSR" (emphasis added). The test under 35 U.S.C. § 103 is not what would have been "likely" to have been obvious but, rather, what would have been led the artisan to modify the prior art or to combine prior art references to arrive at the

claimed invention. Apparently, the Examiner recognizes the speculative nature of the rejection in the acknowledgement that the claimed subject matter would only have been "likely" obvious. Speculation is not a basis for concluding obviousness under 35 U.S.C. § 103.

Accordingly, the Examiner is respectfully requested to reconsider in view of the above comments and the previous response and to withdraw the rejections of the claims under 35 U.S.C. § 103.

Therefore, the present application, as amended, overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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Date

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